

Section (e) -- Deleted and subsequent section renumbered.

In Section 76.1505, institutional networks should and must be treated similarly to PEG channels. This is for several reasons: First, the exact institutional network requirements (like those of PEG channels) vary from municipality to municipality, as is evidenced by the list of types of services provided set forth above.

Second, the "no greater or lesser" requirement of Section 653(c)(2)(b) is not met unless institutional network requirements are addressed and met on a franchise area by franchise area basis.

Note that an effective interconnection between the institutional network of the cable operator and that of the OVS operator is essential. For example, if a municipal wide-area network currently operates on the cable operator institutional network, and it is desirable to extend it to additional locations on institutional network facilities provided by the OVS provider, an effective interconnection is essential.

Finally, as this Commission has noted "some flexibility" is desirable with respect to PEG access requirements. Second Report and Order, at ¶ 140. This is true both for institutional networks and for the combination of PEG and institutional network requirements.

In this regard, the inclusion of institutional networks in the Commission's rules adds some needed flexibility. For example, where it makes little sense for the OVS operator to duplicate a portion of the incumbent cable operator's PEG requirements, the OVS operator may be required to do more in terms of institutional network requirements with the result

that community needs are met, duplication is minimized and the obligations of the OVS operator overall are similar to those of the cable operator. Thus, the presence of institutional network obligations provides some flexibility and assistance in assuring that the OVS operator's obligations overall make sense and are comparable to those of the cable operator.

Revised Section 76.1505(d)(5) addresses this point specifically by making clear that it is the combined PEG and institutional network requirements of the OVS operator that cannot exceed the combined PEG and institutional network requirements of the cable operator, thus allowing some needed flexibility in the specific requirements applicable to each operator.

V. CONCLUSION

In light of the foregoing, MIT Communities respectfully request reconsideration of the Commission's Second Report and Order.

Respectfully submitted,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}
Attorneys for MIT Communities

July 3, 1996

John W. Pestle
Patrick A. Miles, Jr.

BUSINESS ADDRESS & TELEPHONE:

Bridgewater Place
333 Bridge Street, N.W.
Post Office Box 352
Grand Rapids, Michigan 49501-0352
(616) 336-6000

APPENDIX 1 - REVISED SECTION 76.1505

§ 76.1505 Public, educational, ~~and governmental access~~ ~~and institutional networks~~.

(a) An open video system operator shall be subject to public, educational, ~~and governmental access requirements~~ ~~and institutional network requirements~~ for every cable franchise area with which its system overlaps.

(b) An open video system operator must ensure that all subscribers receive any public, educational and governmental access channels within the subscribers' franchise area ~~and that institutional network requirements within the franchise area are met~~.

(c) An open video system operator may negotiate with the local cable franchising authority of the jurisdiction(s) which the open video system serves to establish the open video system operator's obligations with respect to ~~both~~ public, educational and governmental access channel ~~and institutional network~~ capacity, services, facilities and equipment. These negotiations may include the local cable operator if the local franchising authority, the open video system operator and the cable operator so desire.

(d) If an open video system operator and a local franchising authority are unable to reach an agreement regarding the open video system operator's obligations with respect to ~~both~~ public, educational and governmental access channel ~~and institutional network~~ capacity, services, facilities and equipment within the local franchising authority's jurisdiction:

(1) The open video system operator must satisfy the same public, educational and governmental access obligations ~~and institutional network obligations~~ as the local cable operator by connecting with the cable operator's public, educational and governmental access channel feeds ~~and with the cable operator's institutional network~~ and by sharing the costs directly related to supporting public, educational, ~~and governmental access~~ ~~and institutional network~~ services, facilities and equipment necessary to achieve the interconnections. The open video system operator must provide the same amount of public, educational and governmental access ~~and institutional network~~ channels, capacity, services, facilities and equipment ~~as are required of the local cable operator is required to carry~~.

(2) The local franchising authority shall impose the same rules and procedures on an open video system operator as it imposes on the local cable operator with regard to the open video system operator's use of channel capacity designated for public, educational and governmental access use when such capacity is not being used for such purposes.

(3) The local cable operator is required to permit the open video system operator to connect with its public, educational and governmental access channel feeds ~~and with its institutional network~~. The open video system operator and the cable operator may decide how to accomplish ~~this~~ ~~these~~ connections, taking into consideration the exact physical and technical circumstances of the cable and open video systems involved. If the cable and open video system operator cannot agree on how to accomplish the connections, the local franchising authority may decide. The local franchising authority may require that the connections occur on government property or on public rights of way.

(4) The costs of connection and maintaining public, educational and governmental access channel ~~and institutional network~~ capacity, services, facilities and equipment shall be divided equitably between the cable operator and the open video system operator. Shared costs shall include capital contributions and any other costs or investments directly relating to or supporting ~~institutional networks and~~ public, educational and governmental access and required by the cable operator's franchise agreement and which have not been passed through to subscribers, ~~such as under external cost treatment~~. Capital expenses incurred prior to the open video system operator's connection shall be subject to cost sharing on a pro-rata basis to the extent such investments have not been fully amortized by the cable operator ~~or recovered from subscribers, such as by external cost passthroughs~~.

(5) The local franchising authority may not impose public, educational and governmental access obligations ~~or institutional network obligations~~ on the open video system operator ~~which in combination exceed the combined public, educational and governmental access obligations and institutional network obligations that would exceed those imposed on the local cable operator~~.

(6) Where there is no existing local cable operator, the open video system operator must make a reasonable amount of channel capacity available for public, educational and governmental use ~~and for institutional network services~~, as well as provide reasonable support for services, facilities and equipment relating to such public, educational and governmental use ~~and institutional network services~~. If a franchise agreement previously existed in that franchise area, the open video system operator shall be required to maintain the previously existing public, educational and governmental access terms ~~and institutional network terms~~ of that franchise agreement. Absent a previous cable franchise agreement, the open video system operator shall be required to provide channel capacity, services, facilities and equipment relating to public, educational and governmental access ~~and institutional network services~~ equivalent to that prescribed in the franchise agreement(s) for the nearest operating cable system with a commitment to provide public, educational and ~~governmental access and institutional network services~~.

Note to paragraph (d)(6): If a cable system converts to an open video system, the operator will be required to maintain the previously existing terms of its public, educational and governmental access ~~and institutional network~~ obligations.

(7) The open video system operator must adjust its system(s) to comply with new public, educational and governmental access obligations and ~~institutional network obligations~~ imposed by a cable franchise renewal; provided, however, that an open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational and governmental access channels. The open video system operator shall comply with such public, educational and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or decreased demand for channel capacity.

(8) The open video system operator and/or the local franchising authority may file a complaint with the Commission, pursuant to our dispute resolution procedures set forth in Section 76.1514, if the open video system operator and the local franchising authority cannot agree as to the application of the Commission's rules regarding the open video system operator's connection and/or cost sharing obligations under this section.

~~(e) If an open video system operator maintains an institutional network, as defined in Section 611(f) of the Communications Act, the local franchising authority may require that educational and governmental access channels be designated on that institutional network to the extent such channels are designated on the institutional network of the local cable operator~~

(f) An open video system operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this subsection, provided, however, that any open video system operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental facility for any programming which contains nudity, obscene material, indecent material as defined in § 76.701(g), or material soliciting or promoting unlawful conduct. For purposes of this section, "material soliciting or promoting unlawful conduct" shall mean material that is otherwise proscribed by law. An open video system operator may require any access user, or access manager or administrator agreeing to assume the responsibility of certifying, to certify that its programming does not contain any of the materials described above and that reasonable efforts will be used to ensure that live programming does not contain such material.

CERTIFICATE OF SERVICE

I, Nikki L. Klungle, hereby certify that on this 3rd day of July, 1996 [corrected copy mailed on July 10, 1996], I caused copies of the foregoing "Petition for Reconsideration of Michigan, Illinois, Texas Communities" to be sent by first-class mail, postage prepaid to the following:

John Nakahata, Special Assistant
Chairman Hundt's Office
Federal Communications Commission
Room 814
1919 M Street, NW
Washington, DC 20554

Daniel Gonzalez, Legal Advisor
Office of Commissioner Chong
Federal Communications Commission
Room 844
Washington, DC 20554

James Casserly, Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
Room 832
1919 M Street, NW
Washington, DC 20554

Blair Levin, Chief of Staff
Office of the Chairman
Federal Communications Commission
Room 814
1919 M Street, NW
Washington, DC 20554

Lauren Belvin, Senior Legal Advisor
Office of Commissioner Quello
Federal Communications Commission
Room 802
1919 M Street, NW
Washington, DC 20554

Meredith Jones, Chief
Cable Services Bureau
Federal Communications Commission
Room 918
2033 M Street, NW
Washington, DC 20554

Gary Laden, Acting Chief
Consumer Protection &
Competition Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, NW
Washington, DC 20554

Kathleen Levitz, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M. Street, NW
Washington, DC 20554

Lawrence A. Walke, Attorney
Cable Services Bureau
Federal Communications Commission
2033 M Street, NW
Washington, DC 20554

Meryl S. Icove, Legal Advisor
Office of the Bureau Chief
Cable Services Bureau
Federal Communications Commission
Room 918
2033 M Street, NW
Washington, DC 20554

Rick Chessen, Assistant Division Chief
Policy and Rules Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, NW
Washington, DC 20554

William H. Johnson
Deputy Chief for Policy
Cable Services Bureau
Federal Communications Commission
Room 918
2033 M Street, NW
Washington, DC 20554

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, NW
Washington, DC 20554

International Transcription Services
2100 M Street, NW
Room 140
Washington, DC 20037

JoAnn Lucanik
Acting Chief
Policy and Rules Division
Cable Services Bureau
2033 M. Street, NW
Washington, DC 20554

Margo Domon
Acting Assistant Bureau Chief
Cable Services Bureau
Federal Communications Commission
Office of Government & Public Outreach
2033 M. Street, NW
Washington, DC 20554

Elizabeth Beath, Acting Chief
Financial Analysis & Compliance Division
Cable Services Bureau
Federal Communications Commission
2033 M. Street, NW
Washington, DC 20554



Nikki L. Klungle